

AMENDED IN SENATE MAY 23, 2005

AMENDED IN SENATE APRIL 4, 2005

SENATE BILL

No. 439

Introduced by Senator Simitian

February 17, 2005

An act to add Section 6254.26 to the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

SB 439, as amended, Simitian. Public records: disclosure: public investment funds.

The California Public Records Act provides that, except for exempt records, every state or local agency, upon request, shall make records available to any person upon payment of fees to cover costs.

This bill would ~~exempt from disclosure under these provisions certain information contained in~~ *provide that, notwithstanding these provisions*, specified records regarding alternative investments, as defined, in which public investment funds invest *are not subject to disclosure under these provisions*, unless the information is already publicly released by the keeper of the information. The bill would subject ~~other~~ specified information *contained in these records* regarding alternative investments in which public investment funds invest to public disclosure and would provide that the information is not to be considered a trade secret exempt from disclosure.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares ~~the following~~
2 *that Section 2 of this act, which adds Section 6254.26 of the*
3 *Government Code, imposes a limitation on the public's right of*
4 *access to the meetings of public bodies or the writings of public*
5 *officials and agencies within the meaning of Section 3 of Article*
6 *I of the California Constitution. Pursuant to that constitutional*
7 *provision, the Legislature makes the following findings to*
8 *demonstrate the interest protected by this limitation and the need*
9 *for protecting that interest:*

10 (a) Access to information concerning the conduct of the
11 people's business is a fundamental and necessary right of every
12 person in this state pursuant to subdivision (b) of Section 3 of
13 Article I of the California Constitution and Section 6250 of the
14 Government Code. The public has a paramount interest in
15 knowing how public money is spent and invested.

16 (b) Public pension and retirement systems and public
17 endowments and foundations have a fiduciary duty to invest the
18 assets of these funds with care, skill, prudence, and diligence.
19 This fiduciary duty includes diversifying the investment of assets
20 in a manner so as to minimize the risk of loss and maximize the
21 rate of return. Investment in high performing alternative
22 investments is a component of diversifying the pension assets
23 and maximizing the rate of return.

24 (c) At the same time, a certain narrow class of public
25 investments, alternative investments, involves some information
26 that historically has been kept confidential because
27 confidentiality is essential to their success. The disclosure of
28 certain information pertaining to alternative investments could be
29 harmful to generating sustainable and profitable rates of return
30 for the investments of the pension or retirement system and of the
31 public endowment or foundation. Public pension systems desire
32 to invest a portion of their portfolio in alternative investments to
33 boost return.

34 (d) Following recent litigation seeking to require public
35 pension funds and retirement systems and public endowments or
36 foundations to disclose certain information about alternative
37 investments, the funds risk being excluded from participation in
38 certain alternative investments. Exclusion from investing pension

1 or retirement system assets in alternative investments may
2 impose substantial costs on state public pension funds and the
3 public employees who are their beneficiaries.

4 (e) It is the intent of this legislation to balance the public's
5 right of access to information and the ability of public pension
6 funds to continue to invest in alternative investment funds. It is
7 also the intent of this legislation to allow the public to monitor
8 the performance of public investments; for public bodies to avoid
9 payment of excessive fees to private individuals or companies;
10 and for the public to be able to know the principals involved in
11 management of alternative investment funds in which public
12 investment funds have invested so that conflicts of interest on the
13 part of public officials can be avoided. This legislation is not
14 intended to reverse the general presumption of access and
15 openness of the California Public Records Act and subdivision
16 (b) of Section 3 of Article I of the California Constitution.

17 (f) It is not the intent of this legislation to overrule or
18 invalidate any court orders in or stipulated resolutions of prior
19 litigation relating to any public entity's obligation to disclose
20 information about its alternative investments to narrow the
21 information disclosed as a result of those decisions, or in any
22 other way to apply retroactively. It is, rather, the intent of this
23 legislation to establish predictability about what should and
24 should not be disclosed regarding private equity funds so that
25 public pension funds will be able to continue to invest in private
26 equity funds.

27 SEC. 2. Section 6254.26 is added to the Government Code, to
28 read:

29 6254.26. (a) Notwithstanding any provision of this chapter or
30 other law, the following ~~information regarding alternative~~
31 ~~investments in which public investment funds invest shall be~~
32 ~~subject to disclosure pursuant to this chapter and shall not be~~
33 ~~considered a trade secret exempt from disclosure:~~

34 ~~(1) The name, address, and vintage year of each alternative~~
35 ~~investment vehicle.~~

36 ~~(2) The dollar amount of the commitment made to each~~
37 ~~alternative investment vehicle by the public investment fund~~
38 ~~since inception.~~

~~(3) The dollar amount of cash contributions made by the public investment fund to each alternative investment vehicle since inception.~~

~~(4) The dollar amount, on a fiscal year end basis, of cash distributions received by the public investment fund from each alternative investment vehicle.~~

~~(5) The dollar amount, on a fiscal year end basis, of cash distributions received by the public investment fund plus remaining value of partnership assets attributable to the public investment fund's investment in each alternative investment vehicle.~~

~~(6) The net internal rate of return of each alternative investment vehicle since inception.~~

~~(7) The investment multiple of each alternative investment vehicle since inception.~~

~~(8) The dollar amount of the total management fees and costs paid on an annual fiscal year end basis, by the public investment fund to each alternative investment vehicle.~~

~~(9) The dollar amount of cash profit received by public investment funds from each alternative investment vehicle on a fiscal year end basis.~~

~~(b) Notwithstanding any provision of this chapter or other law, the information contained in the following records regarding alternative investments in which public investment funds invest shall not be subject to disclosure pursuant to this chapter, unless the information has already been publicly released by the keeper of the information:~~

~~(1) Due diligence materials that are proprietary to the public investment fund or the alternative investment vehicle.~~

~~(2) Quarterly and annual financial statements of alternative investment vehicles.~~

~~(3) Meeting materials of alternative investment vehicles.~~

~~(4) Information Records containing information regarding the portfolio positions in which alternative investment funds invest.~~

~~(5) Capital call and distribution notices.~~

~~(6) Alternative investment agreements and all related documents.~~

~~(b) Notwithstanding subdivision (a), the following information contained in records described in subdivision (a) regarding alternative investments in which public investment funds invest~~

1 *shall be subject to disclosure pursuant to this chapter and shall*
2 *not be considered a trade secret exempt from disclosure:*

3 *(1) The name, address, and vintage year of each alternative*
4 *investment vehicle.*

5 *(2) The dollar amount of the commitment made to each*
6 *alternative investment vehicle by the public investment fund since*
7 *inception.*

8 *(3) The dollar amount of cash contributions made by the*
9 *public investment fund to each alternative investment vehicle*
10 *since inception.*

11 *(4) The dollar amount, on a fiscal year end basis, of cash*
12 *distributions received by the public investment fund from each*
13 *alternative investment vehicle.*

14 *(5) The dollar amount, on a fiscal year end basis, of cash*
15 *distributions received by the public investment fund plus*
16 *remaining value of partnership assets attributable to the public*
17 *investment fund's investment in each alternative investment*
18 *vehicle.*

19 *(6) The net internal rate of return of each alternative*
20 *investment vehicle since inception.*

21 *(7) The investment multiple of each alternative investment*
22 *vehicle since inception.*

23 *(8) The dollar amount of the total management fees and costs*
24 *paid on an annual fiscal year end basis, by the public investment*
25 *fund to each alternative investment vehicle.*

26 *(9) The dollar amount of cash profit received by public*
27 *investment funds from each alternative investment vehicle on a*
28 *fiscal year end basis.*

29 *(c) For purposes of this section, the following definitions shall*
30 *apply:*

31 *(1) "Alternative investment" means an investment in a private*
32 *equity fund, venture fund, hedge fund, or absolute return fund.*

33 *(2) "Alternative investment vehicle" means the limited*
34 *partnership, limited liability company, or similar legal structure*
35 *through which the public investment fund invests in portfolio*
36 *companies.*

37 *(3) "Portfolio positions" means individual portfolio*
38 *investments made by the alternative investment vehicles.*

- 1 (4) “Public investment fund” means any public pension or
- 2 retirement system, and any public endowment or foundation.

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